

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

Cullan and Cullan LLC,  
on behalf of itself and  
all others similarly situated,

Plaintiff,

v.

m-Qube, Inc., *et al.*,

Defendants.

Case No. 8:13-cv-00172

The Honorable Joseph F. Bataillon

Magistrate Judge Thomas D. Thalken

**PLAINTIFF’S MOTION FOR LEAVE TO FILE REPLY IN  
SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF  
AMENDED AND RESTATED STIPULATION OF SETTLEMENT,  
DISSEMINATION OF NOTICE, AND SETTING OF A FINAL FAIRNESS HEARING**

Plaintiff Cullan and Cullan LLC (“Plaintiff”), individually and on behalf of the Settlement Class, by and through counsel, move this Honorable Court for leave to file a reply in support of Plaintiff’s Motion for Preliminary Approval of Amended and Restated Stipulation of Settlement, Dissemination of Notice, and Setting of Final Fairness Hearing (“Objection”). In support thereof, Plaintiff states as follows:

1. On March 17, 2014, Intervenor Geier’s Response to Plaintiff’s Motion for Preliminary Approval (the “Objection”) was filed. The Objection includes misstatements of fact and makes assertions regarding the Amended and Restated Stipulation of Settlement (“Amended Settlement”) that are unsupported by the record and without merit. To ensure an accurate and complete record in this matter, Plaintiff respectfully requests leave to file the proposed Reply attached hereto as Exhibit A.

2. The Objection includes misstatements of fact. For example, the Objection incorrectly asserts that Settling Parties failed to serve notice of the Amended Settlement on

governmental officials in violation of federal law. In fact, such notice of the Amended Settlement (and the previously proposed settlement) was served via certified first class mail in compliance with applicable law. *See* Supplemental Affidavit of Jeffrey D. Dahl ¶ 5, attached as Exhibit 1 to Plaintiff's proposed Reply.

3. The Objection also includes assertions regarding the amount of evidence presented in support of the Amended Settlement, the sufficiency of the Notice Plan, and the strength of the Amended Settlement that are unsupported by the record and without merit. For example, Geier's insufficient evidence objection largely ignores the facts and arguments presented by Plaintiff in support of preliminary approval and, instead, attempts to convince the Court to reject the Amended Settlement based on his estimate that Settlement Class members' TCPA claims alone may be worth in excess of \$9 billion. Geier's estimate is separated from reality, as illustrated by his and his counsel's failure to assert a TCPA claim in Geier's pending Washington case.

4. Plaintiff submits that a reply to these contentions is necessary to ensure a true and complete record in this matter.

WHEREFORE, Plaintiff requests that this Honorable Court enter an Order granting Plaintiff leave to file the attached Reply to the Geier Objection, and granting any such other relief that the Court deems appropriate.

Dated: March 21, 2014

Respectfully submitted,

/s/ Ben Barnow

One of the attorneys for Plaintiff

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*Additional Plaintiff's Counsel*

**Certificate of Service**

The undersigned hereby certifies a true and correct copy of the foregoing was served via filing with the Court's e-filing service, on this 21st day of March, 2014.

/s/ Ben Barnow